

A copy of BellSouth's revised physical collocation response for East Point (dated April 28, 1998) is attached hereto at Exhibit "F".

20. On May 20, 1998, TCG sent a letter to Ms. Nelson requesting an explanation of the space construction and preparation fees contained in the East Point proposal by June 4, 1998. A copy of the letter to Nancy K. Nelson of BellSouth (dated May 20, 1998) is attached hereto at Exhibit "G".

21. On June 3, 1998, TCG, again concerned about central office space availability, and having received no explanation of the new space construction or preparation fees, submitted a letter to Ms. Nelson requesting that BellSouth begin preparation of TCG's East Point collocation enclosure and notifying BellSouth that TCG was protesting the rates contained in the East Point proposal. A copy of the letter to Nancy K. Nelson of BellSouth (dated June 3, 1998) is attached hereto at Exhibit "H".

22. On June 9, 1998, TCG further notified Ms. Nelson via letter protesting the excessive charges for space preparation associated with the Dunwoody and Courtland Street physical collocation sites, and demanding that the overcharges be applied to TCG's final charges assessed by BellSouth. A copy of the letter to Nancy K. Nelson of BellSouth (dated June 9, 1998) is attached hereto at Exhibit "I".

23. As a result of the above-described actions of BellSouth, TCG has been overcharged by BellSouth for physical collocation in Georgia, and TCG has suffered delays in constructing its network. Moreover, the harm caused to TCG by BellSouth's actions will become irreparable if the requested BellSouth collocation sites become unavailable. Accordingly, pursuant to Section XXXI of the Agreement governing dispute resolution, TCG hereby files this Complaint requesting that the

Commission conduct a hearing on an expedited basis to address the issues raised in this Complaint and order BellSouth to immediately provide TCG with physical collocation at reasonable rates, terms and conditions.

III. JURISDICTION OF THE COMMISSION

24. Pursuant to Section 252 of the 1996 Act, TCG and BellSouth negotiated the Agreement and filed it with the Commission. Acting under authority granted in Section 252(e) of the 1996 Act, the Commission approved the Agreement on November 8, 1996.²⁴ In its *Order Approving Negotiated Interconnection Agreement*, the Commission expressly retained jurisdiction over issues related to the Agreement “for the purpose of entering such further order or orders as the Commission may deem just and proper.”²⁵ Thus, the Commission has jurisdiction to hear the Complaint described herein.

25. In *Iowa Utilities Board v. FCC*, the United States Court of Appeals for the Eighth Circuit confirmed that state commissions, like this one, “retain the primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252.”²⁶ Specifically, the Eighth Circuit Court described state commission authority with respect to interconnection agreements as follows:

[w]e believe that the state commission’s plenary authority to accept or reject these agreements necessarily carries with it the authority to enforce the provisions of agreements that the state commissions have approved. Moreover, the state commissions’ enforcement power extends to ensuring that parties comply with the regulations that the FCC is specifically authorized to issue under the [1996 Act], because

²⁴*Order Approving Negotiated Interconnection Agreement* at 3.

²⁵*Id.*

²⁶*Iowa Utilities Board v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997).

the [1996 Act] empowers state commissions to reject arbitrated agreements on the basis that they violate the FCC's regulations.²⁷

This Commission, therefore, has jurisdiction to hear the Complaint regarding the interpretation and enforcement of the terms of the Agreement.

26. Finally, the Commission has jurisdiction to hear this Complaint pursuant to the Telecommunications and Competition Development Act of 1995 ("Georgia Act").²⁸ Specifically, the Georgia Act unequivocally states that local exchange companies, such as BellSouth, must "permit reasonable interconnection with other certificated local exchange companies" and that the Commission "shall have the authority to require local exchange companies to provide additional interconnection services and unbundling."²⁹ Moreover, the Commission's jurisdiction includes authority to "[r]esolve complaints against a local exchange company regarding the company's service,"³⁰ and to take steps necessary to prevent anticompetitive, unjust and unreasonable practices by telecommunications companies subject to its jurisdiction.³¹

²⁷*Id.*

²⁸O.C.G.A. §§ 46-5-160 *et. seq.*

²⁹O.C.G.A. §§ 46-5-164(a) & (g).

³⁰O.C.G.A. § 46-5-168(b)(5). *See also* O.C.G.A. § 46-2-20(b) (stating that "the [C]ommission may hear complaints").

³¹O.C.G.A. §§ 46-5-169, 46-2-20(c).

IV. SPECIFIC ALLEGATIONS

- A. BELLSOUTH HAS BREACHED THE AGREEMENT AND HAS VIOLATED THE 1996 ACT, THE GEORGIA ACT AND THE *COST STUDY ORDER* BY REFUSING TO PROVIDE TCG WITH PHYSICAL COLLOCATION AT REASONABLE RATES.**

COUNT 1. BellSouth Has Breached The Agreement By Failing To Provide TCG With Physical Collocation At Reasonable Rates.

27. BellSouth has breached Sections IV(F), IV(G), IX(A) and XXIII(B) of the Agreement by refusing to provide TCG with physical collocation at reasonable rates.

28. Under Georgia contract law, if a writing is unambiguous on its face, a finder of fact may not go beyond the four corners of the document to contradict or vary the clearly expressed terms.³² If the contract terms are not clear, then the finder of fact is to give effect to the intentions of the parties.³³ A contract is ambiguous if, and only if, it is reasonably susceptible to different constructions, is capable of being understood in more senses than one, and is obscure in meaning through indefiniteness of expression or has a double meaning.³⁴ In determining whether there is an ambiguity requiring interpretation, the whole contract must be considered.³⁵ TCG submits that the terms of the Commission-approved Agreement unambiguously require BellSouth to provide TCG with physical collocation at the rates prescribed by the Commission in the *Cost Study Order* and *Order on Clarification*.

³²See *Franchise Enters., Inc. v. Ridgeway*, 157 Ga. App. 458, 278 S.E.2d 33 (1981); *Crooks v. Crim*, 159 Ga. App. 745, 285 S.E.2d 84 (1981).

³³See *Olympic Dev. Group, Inc. v. American Druggists' Ins. Co.*, 175 Ga. App. 425, 333 S.E.2d 622 (1985).

³⁴See *Burden v. Thomas*, 104 Ga. App. 300, 121 S.E.2d 684 (1961).

³⁵O.C.G.A. § 13-2-2(4).

29. Pursuant to Section IV(G) of the Agreement, TCG and BellSouth agreed "to accept and to provide" physical collocation to each other. Further, under Sections IV(G) and IX(A), BellSouth agreed to provide TCG with physical collocation pursuant to the rates, terms and conditions set forth in Attachment C-13, BellSouth's Collocation Handbook, which is incorporated into the Agreement by reference. Moreover, under Section XXIII(B), if as a result of any proceeding before a court, the Commission or the FCC, BellSouth becomes obligated to provide collocation to another CLEC at rates, or on terms and conditions, more favorable to the CLEC than to TCG, BellSouth must immediately incorporate such order's rates, terms and conditions into the Agreement.

30. On December 16, 1997, the Commission issued its *Cost Study Order* which reduced the fees BellSouth could charge CLECs for space preparation and space construction in connection with physical collocation arrangements. Thereafter, on April 9, 1998, the Commission issued its *Order on Clarification* wherein the Commission clarified and upheld the collocation fee reductions set forth in the *Cost Study Order*. In the *Order on Clarification*, the Commission ordered BellSouth to reflect the fee reductions in all collocation agreements and in BellSouth's Collocation Handbook. According to the Affidavit of Alphonso J. Varner, BellSouth's Senior Director of Regulatory, filed with the Commission in Docket No. 7253-U, BellSouth has reflected the revised collocation pricing in Appendix A to its Statement of Generally Available Terms and in a collocation agreement recently signed by BellSouth and NEXTLINK Georgia, Inc.³⁶ Accordingly, under Section XXIII(B)

³⁶See BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions under Section 252(f) of the Telecommunications Act of 1996, Affidavit of Alphonso J. Varner, Docket No. 7253-U (May 22, 1998).

of the Agreement, BellSouth is obligated to provide TCG with the collocation pricing established in the *Cost Study Order* and *Order on Clarification*.

31. However, a summary of the collocation charges imposed by BellSouth upon TCG and those approved by the Commission, as follows, establishes that BellSouth has failed to provide such pricing to TCG.

	<u>BellSouth</u>	<u>Cost Study Order/ Order on Clarification</u>
a. East Point		
Space Preparation	\$139,368.53	\$ 20,000.00
Space Construction	\$ 59,488.00	\$ 9,000.00
b. Dunwoody		
Space Preparation	\$ 81,401.43	\$ 20,000.00
Space Construction	\$ 9,000.00	\$ 9,000.00
c. Courtland Street		
Space Preparation	\$ 92,690.00	\$ 20,000.00
Space Construction	\$ 9,000.00	\$ 9,000.00
d. Total:	\$390,947.96	\$ 87,000.00

32. An examination of the Agreement leads to the unequivocal conclusion that TCG is entitled to the collocation pricing adopted by the Commission in the *Cost Study Order* and the *Order on Clarification*. Consequently, BellSouth's continued refusal to provide TCG with physical collocation pricing as required in the Agreement constitutes a material and willful breach of the terms of the Agreement.

COUNT 2. BellSouth Has Violated Sections 251(c)(2) And 251(c)(6) Of The 1996 Act By Failing To Provide Physical Collocation To TCG At Rates, Terms And Conditions That Are Just, Reasonable And Nondiscriminatory.

33. BellSouth has violated Sections 251(c)(2) and 251(c)(6) of the 1996 Act by refusing to provide TCG with physical collocation at rates, terms and conditions that are just, reasonable and nondiscriminatory.

34. Federal law requires incumbent local exchange carriers to interconnect their telecommunications networks with those of other telecommunications carriers on nondiscriminatory terms and conditions. Specifically, Section 251(c)(2) of the 1996 Act obligates an incumbent local exchange carrier such as BellSouth to provide to any requesting telecommunications carrier “interconnection with the local exchange carrier’s network . . . that is at least equal in quality to that provided by the local exchange carrier to itself . . . or any other party to which the carrier provides interconnection . . . on rates, terms and conditions that are just, reasonable, and non-discriminatory[.]”³⁷ Further, with respect to collocation - one method of interconnection - Section 251(c)(6) of the 1996 Act obligates an incumbent local exchange carrier “to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection . . . at the premises of the local exchange carrier.”³⁸

35. BellSouth has refused to provide physical collocation to TCG on a non-discriminatory basis. According to Alphonso J. Varner, BellSouth’s Senior Director of Regulatory, BellSouth currently provides physical collocation to NEXTLINK Georgia, Inc. in accordance with the rates and charges adopted by the Commission in the *Cost Study Order* and *Order on Clarification*.³⁹ Nevertheless, BellSouth refuses to provide TCG with physical collocation pursuant to the pricing adopted by the Commission.

³⁷47 U.S.C. § 251(c)(2).

³⁸47 U.S.C. § 251(c)(6).

³⁹*See supra* Note 36.

36. By its refusal to provide TCG with such collocation pricing, BellSouth's actions constitute unjust, unreasonable and discriminatory acts and practices in violation of Sections 251(c)(6) and 251(c)(2) of the 1996 Act.

COUNT 3. BellSouth Has Violated Section 46-5-164(a) Of The Georgia Act By Failing To Provide TCG With Physical Collocation At Reasonable Rates.

37. BellSouth has violated Section 46-5-164(a) of the Georgia Act by refusing to provide TCG with physical collocation at reasonable rates.

38. Georgia law requires "[a]ll local exchange companies [to] permit *reasonable interconnection* with other certificated local exchange companies."⁴⁰ In the *Cost Study Order*, the Commission determined the reasonable rates for space preparation and space construction in connection with interconnection via physical collocation, stating that:

[t]he Commission has reviewed the Staff's approach to developing a reasonable, per-square foot space preparation charge, and *finds it just, reasonable and nondiscriminatory*. The Commission concludes that \$100 per square foot is a *reasonable* specific charge for space preparation, which also comports with BellSouth's \$45 per square foot charge for space enclosure construction.⁴¹

39. Instead of charging TCG the "reasonable" space preparation and construction fees adopted by the Commission, BellSouth has charged TCG amounts far in excess of the Commission's prescribed fees. BellSouth's refusal to provide physical collocation to TCG at the rates and fees deemed reasonable by the Commission constitutes an unreasonable practice in violation of Section 46-5-164(a) of the Georgia Act.

⁴⁰O.C.G.A. § 46-5-164(a) (emphasis supplied).

⁴¹*Cost Study Order* at 62 (emphasis supplied).

COUNT 4. **BellSouth Has Violated The Cost Study Order And Order On Clarification By Refusing To Provide TCG With Collocation Pricing As Mandated Therein.**

40. BellSouth has failed to comply with the Commission's pricing requirement for physical collocation set forth in the *Cost Study Order* and *Order on Clarification*.

41. In the *Cost Study Order*, the Commission ordered BellSouth to charge CLECs \$100 per square foot (minimum of 100 square feet with additional space available only in 50 square foot increments) for space preparation and \$45 per square foot for space construction.⁴² In its *Order on Clarification*, the Commission clarified the *Cost Study Order* regarding BellSouth's pro-rata assessment of space preparation charges upon CLECs, stating that:

BellSouth shall not charge a collocating CLEC a pro-rated amount based on the actual cost of renovating or upgrading the central office space and support mechanisms. Nor shall BellSouth charge the collocating CLECs for shared common space in the central office.⁴³

The Commission further clarified the *Cost Study Order*'s requirements regarding space preparation charges, stating that:

BellSouth shall be allowed to charge a non-recurring space preparation charge of \$100 per square foot to recover the cost of renovating or upgrading support mechanisms. These costs could include heating/ventilation/air conditioning (HVAC) equipment, HVAC duct work, cable support structure, fire wall(s), mechanical upgrade, asbestos abatement, ground plane addition, or separate ingress/egress construction.⁴⁴

⁴²*Cost Study Order* at 62.

⁴³*Order on Clarification* at 2 (emphasis supplied).

⁴⁴*Id.*

Finally, the Commission directed BellSouth to reflect these fee clarifications in all collocation agreements and in BellSouth's Collocation Handbook.⁴⁵

42. Nonetheless, BellSouth's charges to TCG for physical collocation fail to comply with the *Cost Study Order* and *Order on Clarification* as follows: (a) BellSouth has charged TCG space preparation fees of \$139,368.53 (East Point), \$81,401.43 (Dunwoody), \$92,690.00 (Courtland Street) instead of charging TCG the Commission mandated \$20,000.00 for each 200 square foot collocation enclosure; (b) BellSouth has charged TCG a space construction fee of \$59,488.00 instead of charging TCG the Commission mandated \$9,000.00 for a 200 square foot collocation enclosure in East Point; and (c) each BellSouth response stated that TCG's collocation charges included prohibited "prorated costs" for demolition, wall construction, lighting, electromechanical, floor treatment, A&E fees, HVAC and other costs.

43. Consequently, the Commission should find that BellSouth has violated the *Cost Study Order* and the *Order on Clarification* through its failure and refusal to comply with such collocation pricing requirements.

B. BELLSOUTH HAS ENGAGED IN ANTICOMPETITIVE ACTS AND PRACTICES BY IMPOSING COLLOCATION APPLICATION PROCEDURES NOT CONTAINED IN THE AGREEMENT.

COUNT 5. BellSouth Has Engaged In Anticompetitive Acts And Practices By Requiring TCG To Execute A New Collocation Agreement Which Contains Unlawful Pricing.

44. BellSouth has violated Section 46-5-169(4) of the Georgia Act by requiring TCG - as a condition precedent to obtaining the requested physical collocation - to enter into a new collocation agreement that contains unlawful pricing.

⁴⁵*Id.*

45. In the responses to TCG's requests for physical collocation arrangements at the East Point, Dunwoody and Courtland Street central offices, BellSouth imposed a new requirement that TCG enter into a "BellSouth Physical Collocation Master Agreement."⁴⁶ This requirement is not mandated by the Agreement, nor has BellSouth imposed such a requirement upon TCG with respect to previous collocation arrangements in Georgia. Moreover, the new agreement contains unlawful rates and charges. Specifically, BellSouth's proposed agreement contains a newly-created, additional engineering fee which is priced on an individual case basis. In pertinent part, this new fee is described in the proposed agreement as:

BellSouth's engineering and other labor costs associated with establishing the Physical Collocation Arrangement shall be recovered as Additional Engineering charges, under provisions in BellSouth's F.C.C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges shall be provided by BellSouth in the Application Response.⁴⁷

46. In the *Cost Study Order*, the Commission expressly prohibited BellSouth from charging more than \$100 per square foot for space preparation. By imposing the additional engineering charge, however, BellSouth will be able to extract additional, immeasurable fees from CLECs for engineering and labor that were previously charged as space preparation. Moreover, in the *Cost Study Order*, the Commission recognized that BellSouth's imposition of collocation charges such as this one on an individual case basis was "an obstacle to competition because it introduces unnecessary uncertainty into the process of obtaining physical collocation."⁴⁸

⁴⁶See, e.g., *BellSouth Courtland Street Response* at 1.

⁴⁷Draft Collocation Amendment By and Between BellSouth Telecommunications, Inc. And Teleport Communications Group, Inc. for the state of Georgia, at 19 (March 23, 1998).

⁴⁸*Cost Study Order* at 62.

47. Instead of complying with the terms of the Agreement with respect to ordering physical collocation, BellSouth has attempted to impose new requirements and procedures that, in part, facially appear to be unlawful. BellSouth's actions in this regard constitute unreasonable and anticompetitive acts and practices in violation of 46-5-169(4) of the Georgia Act.

V. REQUESTED RELIEF

48. TCG hereby requests that the Commission grant the following relief in response to Counts 1 through 5 of this Complaint:

(A) issue an order finding that BellSouth failed to comply with its interconnection obligations contained in Sections IV(G), IX(A) and XXIII(B) of the Agreement, Sections 251(c)(2) and 251(c)(6) of the 1996 Act, Section 46-5-164(a) of the Georgia Act and in the *Cost Study Order*;

(B) issue an order directing BellSouth to immediately provide TCG with physical collocation pricing as required under Sections IV(G), IX(A) and XXIII(B) of the Agreement, Sections 251(c)(2) and 251(c)(6) of the 1996 Act, Section 46-5-164(a) of the Georgia Act and under the *Cost Study Order*;

(C) issue an order finding that BellSouth engaged in anticompetitive acts and practices in violation of Section 46-5-169(4) of the Georgia Code;

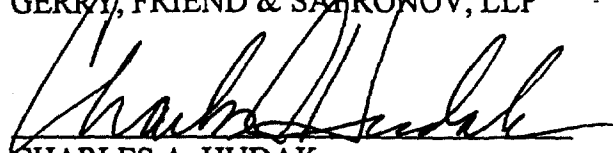
(D) issue an order directing BellSouth to refund to TCG all overcharged amounts for space preparation and space construction fees;

(E) issue an order imposing statutory penalties against BellSouth under Section 46-2-91 of the Georgia Code for violating (i) the interconnection obligation contained at Section 46-5-164(a) of the Georgia Act, (ii) the Commission's *Cost Study Order* and *Order on Clarification*, and (iii) its obligation not to engage in anticompetitive acts and practices in violation of Section 46-5-169(4) of the Georgia Act; and

(F) issue such other relief as the Commission deems just and proper.

Respectfully submitted this 12th day of June, 1998.

GERRY, FRIEND & SARONOV, LLP



CHARLES A. HUDAK
Georgia Bar No. 373980

Three Ravinia Drive, Suite 1450
Atlanta, GA 30346-2131
(770) 399-9500

and

Michael A. McRae, Esq.
Senior Regulatory Counsel
Teleport Communications Group Inc.
1133 21st Street, N.W., Suite 400
Washington, D.C. 20036
(202) 739-0032

COUNSEL FOR TELEPORT COMMUNICATIONS GROUP INC.

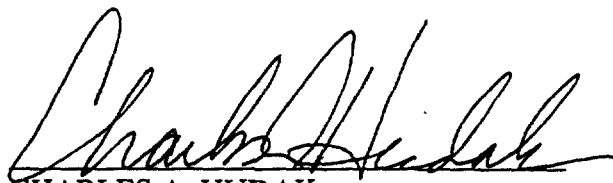
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Formal Complaint No. 2, by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to insure delivery to the following parties:

Jim Hurt, Director
Consumers' Utility Counsel
2 MLK Jr. Dr. E Tower, Ste 356
Atlanta, GA 30334

Fred McCallum, Jr., Esq.
General Counsel
BellSouth Telecom., Inc.
Room 376
125 Perimeter Center West
Atlanta, GA 30346

This 12th the day of June, 1998.


CHARLES A. HUDAK
Georgia Bar No. 373980

GERRY, FRIEND & SAPRONOV, LLP
Suite 1450
Three Ravinia Drive
Atlanta, Georgia 30346-2131
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Georgia Bar No. 373980

GERRY, FRIEND & SAPRONOV, LLP
Suite 1450
Three Ravinia Drive
Atlanta, Georgia 30346-2131
(770) 399-9500

Exhibit "A"

**Excerpts from Interconnection Agreement by and between BellSouth
Telecommunications, Inc. and Teleport Communications Group Inc.**

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and Teleport Communications Group, Inc., a Delaware corporation, on behalf of itself and its wholly owned subsidiaries, (collectively referred to as "TCG"), and shall be deemed effective as of July 15, 1996. This agreement may refer to either BellSouth or TCG or both as a "party" or "parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, TCG is a local exchange telecommunications company authorized, has applications pending, or may make application to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities, purchase unbundled elements, and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996;

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and TCG agree as follows:

I. Definitions

A. Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

B. Commission is defined as the appropriate regulatory agency in each of BellSouth's nine state region, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS") and by Bellcore as Special Report SR-BDS-000983, containing the recommended guidelines for the billing of Exchange Service access provided by two or more LECs and/or CLECs or by one LEC in two or more states within a single LATA.

J. **Multiple Exchange Carriers Ordering and Design Guidelines for Access Services--Industry Support Interface ("MECOD")** means a document developed by the Ordering/Provisioning Committee under the auspices of the OBF, which functions under the auspices of the Carrier Liaison Committee of the ATIS. The ECOD document, published by BellCore as Special Report SR-STS-002643, establishes methods for processing orders for access service provided by two or more local carriers (including a LEC and a CLEC).

II. Purpose

The parties intend that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform with each party's obligations under sections 251, 252 and 271 of the Act. The access and interconnection obligations contained herein, when implemented, are intended to enable TCG to provide competing telephone exchange service to residential and business subscribers within the nine state region of BellSouth. To the extent the items in 47 U.S.C. § 271(c)(2)(B) are contained within this Agreement, the parties intend and expect that with the successful implementation of this Agreement, BellSouth will satisfy the requirements of 47 U.S.C. § 271(c)(2)(B).

III. Term of the Agreement

A. The term of this Agreement shall be three years, beginning July 15, 1996.

B. The parties agree that by no later than December 1, 1998, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning July 1, 1999.

C. If, within 135 days of commencing the negotiation referred to in Section III (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the Commission to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the Commission to issue its order regarding the appropriate local interconnection arrangements no later than March 2, 1999. The parties further agree that in the event the Commission does not issue its order prior to July 1, 1999 or if the parties continue beyond July 1, 1999 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the

parties, will be effective retroactive to July 1, 1999. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

IV. Local Interconnection (47 U.S.C. §251(c)(2), §252(d)(1),(2), §271(c)(2)(B)(i))

A. The parties intend that the interconnection of their equipment, facilities and networks pursuant to this section will comply with the requirements of sections 251, 252 and 271 of the Act upon successful implementation of this Article.

B. The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.

C. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, incorporated herein by this reference. Each state to which this Agreement applies will be billed separately. The charges for local interconnection are to be billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. To the extent TCG will connect to BellSouth's access tandem and BellSouth's end offices the rate for TCG's local interconnection will be a combination of tandem and end office rates. BellSouth agrees that the local interconnection rate it shall pay to TCG shall be computed using a similar percentage of tandem and end office rates. The rate will be determined as an average of end office routed minutes and tandem routed minutes.

D. The first six month period of traffic exchange under this Agreement in each state is a testing period in which the parties agree to exchange data and render billing. However, no compensation during this period will be paid. If, during the second six month period, the monthly net amount to be billed prior to the cap being applied pursuant to subsection (E) of this section is less than \$40,000.00 for each state, the parties agree that no payment is due. This cap shall be reduced for each of the subsequent six month periods as follows: 2nd period -\$40,000.00; 3rd period-\$30,000.00; and 4th period--\$20,000.00. The cap shall be \$0.00 for any period after the expiration of the 4th six month period.

E. The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the initiation of traffic exchange pursuant to this

Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations, including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their prospective PLU.

F. The parties agree that there are four appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party; and (4) upon mutual agreement as to technical feasibility, the parties may also interconnect on a mid-span basis. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7) services tariff or as contained in Attachment B-1 for local interconnection, incorporated herein by this reference.

G. The parties agree to accept and provide any of the preceding methods of interconnection. TCG shall establish a point of interconnection at each and every BellSouth access tandem within the local calling area TCG desires to serve for interconnection to those end offices that subtend the access tandem. Alternatively, TCG may elect to interconnect directly at the end offices for interconnection to end users served by that TCG end office. BellSouth will connect at each TCG end office or tandem inside that local calling area. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to BellCore Standard No. TR-NWT-00499. Signal Transfer Point, Signaling System 7 ("SS7") connectivity is required at each interconnection point. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties agree that their facilities shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling party number ID when technically feasible. The parties further agree that in the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate access tariff, as amended from time to time will apply.

H. The parties agree to establish trunk groups from the interconnecting facilities of subsection (F) of this section such that each party provides a reciprocal of each trunk group established by the other party. Notwithstanding the foregoing, each party may construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency.

I. TCG agrees to use NXX codes in a manner that will allow BellSouth to distinguish Local Traffic (measured and flat rate) from intraLATA toll traffic. If either

B. BellSouth will offer an unbundled local loop to TCG at the rates as set forth in Attachment C-15, incorporated herein by this reference. Special construction charges, if applicable, will be as set forth in BellSouth's Intrastate Special Access Tariff as said tariff is amended from time to time during the term of this Agreement. BellSouth will also offer, as a new service loop concentration as set forth in Attachment C-16, incorporated herein by this reference. The parties agree that loop concentration service is not an unbundled element.

C. BellSouth will offer to TCG unbundled loop channelization system service which provides the multiplexing function to convert 96 voice grade loops to DS1 level for connection with TCG's point of interface. Rates are as set forth in Attachment C-16, incorporated herein by this reference.

D. BellSouth will offer to TCG unbundled local transport from the trunk side of its switch at the rates as set forth in Attachment B-1, incorporated herein by this reference.

E. BellSouth will offer to TCG unbundled local switching at the rates as set forth in Attachment C-17, incorporated herein by this reference, for the unbundled exchange service port.

F. BellSouth agrees to offer to TCG, upon its request for a 24 to 28 month commitment, the equivalent of a SmartPath® loop at a rate not to exceed a recurring monthly charge of \$190.00. BellSouth further agrees to offer to TCG, upon its request, the equivalent of a MegaLinkSM Plus loop, priced in accordance with section 252(d) of the Act.

G. The parties agree that BellSouth may provide, upon TCG request, any other network element on an unbundled basis at any technically feasible point on its network pursuant to the requirements of section 251 of the Act.

VIII. Access To Poles, Ducts, Conduits, and Rights of Way (47 U.S.C. § 251(b)(4) and §271(c)(2)(B)(iii))

A. BellSouth agrees to provide to TCG, pursuant to 47 U.S.C. § 224, as amended by the Act, nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth. The rates, terms and conditions are set out in Attachment C-14.

IX. Physical Collocation (47 U.S.C. §251(c)(6))

A. The parties agree that each shall provide to the other physical collocation services pursuant to Attachment C-13, incorporated herein by this reference.

party's use or reliance on the other party's services, action, duties, or obligations arising out of this Agreement.

E. BellSouth assumes no liability for the accuracy of the data provided to it by TCG and TCG agrees to indemnify and hold harmless BellSouth for any claim, action, cause of action, damage, injury whatsoever, that may result from the accuracy of data from TCG to BellSouth in conjunction with the provision of any service provided pursuant to this Agreement.

F. No license under patents (other than the limited license to use) is granted by BellSouth or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement. BellSouth will defend TCG against claims of patent infringement arising solely from the use by TCG of services offered pursuant to this Agreement and will indemnify TCG for any damages awarded based solely on such claims.

G. Either party's failure to provide or maintain services offered pursuant to this Agreement shall be excused by labor difficulties, governmental orders, civil commotion, criminal actions taken against either party, acts of God and other circumstances beyond that party's reasonable control.

H. Neither party shall be liable to the other for any special or consequential damages.

XXIII. More Favorable Provisions

A. If as a result of any proceeding before any Court, Commission, or FCC, voluntary agreement or arbitration proceeding pursuant to the Act, or pursuant to any applicable state law, BellSouth becomes obligated to provide interconnection, number portability, unbundled access to network elements or any other services related to interconnection, whether or not presently covered by this Agreement, to another telecommunications carrier operating within a State within the Territory at rates or on terms and conditions more favorable to the carrier than the applicable provisions of this Agreement, TCG, subject to a written amendment to this Agreement, shall be entitled to substitute such more favorable rates, terms or conditions for the relevant provisions of this Agreement which shall apply to the same states as such other carrier and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the effective date thereof to such other carrier.

B. If the more favorable provision is a result of the action of an appropriate regulatory agency or judicial body whether commenced before or after the effective date of this Agreement, after the waiver or exhaustion of all administrative and judicial remedies, the parties agree to incorporate such order in this Agreement as of its effective date. In the event BellSouth files and receives approval for a tariff offering to provide any substantive service of this Agreement in a way different than that provided

for herein, the parties agree that TCG shall be eligible for subscription to said service at the rates, terms and conditions contained in tariffs as of the effective date of the tariff.

C. The Parties acknowledge that BellSouth will guarantee the provision of universal service as the carrier-of-last-resort throughout its territory in Florida until January 1, 1998 without contribution from TCG.

XXIV. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). Both parties agree that all Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both parties agree that the Information shall not be copied or reproduced in any form. Both parties agree to receive such Information and not disclose such Information. Both parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such Information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; or 3) previously known to the receiving party without an obligation to keep it confidential.

XXV. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

XXVI. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

Attachment C-13

Unbundled Products and Services and New Services

Service: Virtual Collocation

Description: Virtual Expanded Interconnection Service (VEIS) provides for location interconnection in collocator-provided/BellSouth leased fiber optic facilities to BellSouth's switched and special access services, and local interconnection facilities.

State(s): All

Rates, Terms and Conditions: In all states, the rates, terms and conditions will be applied as set forth in Section 20 of BellSouth Telecommunication's Inc.'s Interstate Access Service Tariff, F.C.C. No. 1.

Service: Physical Collocation

Description: Per FCC - (10/19/92 FCC Order, para 39)
Physical Collocation is whereby "the interconnection party pays for LEC central office space in which to locate the equipment necessary to terminate its transmission links, and has physical access to the LEC central office to install, maintain, and repair this equipment."

State(s): All

Rates, Terms and Conditions: Rates as attached

BellSouth Telecommunications
Reference Handbook
for
Co-location